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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY BENSON, CHASE GARFINKLE,
PAUL HAEBERLI, and HWEI MIEN QUEK

Appeal 2008-0052
Application 09/679,948
Technology Center 2600

Decided: July 18, 2008

Before KENNETH W. HAIRSTON, JOHN A. JEFFERY, and KEVIN F.
TURNER, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's rejection of claims 1-45. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

INVENTION

Appellants' claimed invention is directed to:

a method for manipulating a digital image that includes identifying an image for processing at a local client computer, sending the image to a remote server, manipulating either locally or remotely parameters associated with the image without modifying the image itself and synchronizing the local client computer and the remote server including updating metadata for one of the local client computer and the remote server using metadata of the other.
(Spec. 4:23-28).

The manipulating step can include manipulating a proxy image associated with the image (Spec. 5:1). The proxy image's resolution can be lower or higher than that of its associated image (Spec. 5:2).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method for manipulating a digital image comprising:
identifying an image for processing at a local client computer;
sending the image to a remote server;
manipulating either locally or remotely parameters associated with the image without modifying the image itself; and

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synchronizing the local client computer and the remote server including updating metadata for one of the local client computer and the remote server using metadata of the other.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Tackbary	US 6,092,054	Jul. 18, 2000
Wilkins	US 2004/0133924 A1	Jul. 08, 2004 (filed Dec. 15, 2000)

The following rejections are before us for review:

1. Claims 1-23, 25-31, and 33-45 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Wilkins.
2. Claims 24 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkins in view of Tackbary.

ANTICIPATION

There are multiple anticipation issues before us regarding whether Appellants have shown that the Examiner erred in rejecting claims 1-23, 25-31, and 33-45 under 35 U.S.C. § 102(e).

We present these issues as they correspond to, and in the order of, Appellants' presented arguments:

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Regarding claim 1

Did the Examiner err in determining that Wilkins teaches: a) identifying an image for processing at the local computer and sending the image to a remote server, and b) manipulating either locally or remotely parameters associated with the image without modifying the image itself as claimed?

Regarding claim 2

Did the Examiner err in determining that Wilkins teaches the synchronizing step including updating local client software for manipulating the image as claimed?

Regarding claim 3

Did the Examiner err in determining that Wilkins teaches the manipulating step including manipulating a proxy image associated with the image as claimed?

Regarding claim 15

Did the Examiner err in determining that Wilkins teaches that the image parameters include annotation information as claimed?

Regarding claim 17

Did the Examiner err in determining that Wilkins teaches that the image parameters include the state of the user interface as claimed?

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Regarding claim 22

Did the Examiner err in determining that Wilkins teaches a personal template that describes a particular configuration for the parameters for a given image and wherein the image parameters include an identifier pointing to the personal template as claimed?

Regarding claim 26

Did the Examiner err in determining that Wilkins teaches checking for conflicts between the metadata stored at the local client computer and the remote server as claimed?

Regarding claim 28

Did the Examiner err in determining that Wilkins teaches storing two different states of the metadata at each of the local client computer and the remote server as claimed?

Regarding claim 29

Did the Examiner err in determining that Wilkins teaches the step of alerting the user including displaying a dialog box to the user from which a selection can be made as claimed?

FINDINGS OF FACT

The relevant facts include the following:

1. Wilkins teaches that with conventional Web editing techniques, the entire image must be downloaded to be processed locally (§[0113]).
2. Wilkins further recognizes a more efficient approach of downloading a low-resolution image from the remote computing device (§[0113]).

3. Wilkins further teaches:

More specifically, in a distributed system, such as, for example, the Web, CD media, or directly from a digital camera or other imaging appliance device, the invention provides that a user's digital negative can reside anywhere within the distributed system. In addition, the invention provides the additional capability of storing a modified image locally (or remotely) on read-writeable media while maintaining a reference to the original digital negative. In this way, the user is able to not only access the modified image, but can also automatically access the original digital negative. It should be noted and appreciated that the modified image (also known as a resultant proxy image) can take the form of a fully rasterized image or a lower-resolution thumbnail that contains the results of the edits applied to the digital negative.

(¶[0030]).

4. Wilkins further teaches that the user may choose to save the resultant image locally with the edit list with a link to the original digital negative that can be a reference at any node in the network (¶[0113]).
5. Wilkins further teaches that synchronization can be performed by either sending only the update edit list or by sending the resultant image (¶[0117]).
6. Furthermore, Wilkins teaches that the file that contains the edit-list can take several forms including an approach involving the complete encapsulation of not only the resultant image and the edit list, but also a digital negative (i.e., the original digital negative) (¶[0112]).
7. Wilkins teaches that the edit list may also include operations that are part

- of the state description (i.e., state of the user interface) (§[0075]).
8. The term “annotation” is defined, in pertinent part, as “a note added by way of comment or explanation[.]” *Merriam-Webster Online Dictionary*, at <http://www.merriam-webster.com/cgi-bin/dictionary?book=Dictionary&va=annotation> (last visited June 25, 2008).
 9. Wilkins teaches text strings that are part of the edit list data associated with the image (§[0102]).
 10. Wilkins teaches that operations that are part of the state description can be a list of individual operations (§[0075]).
 11. Wilkins teaches that detected changes or modifications (i.e., crop, cut, rotate) produce an updated list which results in synchronization between the local and the remote device either by sending the update list or the resultant image that incorporates all the modifications (§[0117]).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. Inc., v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim. We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of

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the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

Initially, we note that Appellants' mere reiteration of the claim limitations set forth in claims 4-7, 12, 13, 18, 21, and 43-45¹ (App. Br. 6) is not considered an argument of patentability. Simply pointing out what a claim requires with no attempt to point out how or why the claims patentably distinguish over the prior art does not amount to a separate argument for patentability. 37 C.F.R. § 41.37(c)(1)(vii) (2004). *See also In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987). Furthermore, the Examiner specifically indicated what portions of the reference were relied upon for each limitation, and Appellants did not specifically point out any errors addressing why the particular portions do not satisfy the claim limitations. Additionally, no arguments pertaining to patentability were presented with respect to claims 8-11, 14, 16, 18-21, 23, 25, 27, 30-31, and 33-42. Accordingly, these claims, which are subject to the same ground of rejection, fall with claim 1 from which they depend. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2004).

¹ We are addressing the arguments as set forth in the Supplemental Appeal Brief dated 09/01/2006.

Regarding claim 1

a) Did the Examiner err in determining that Wilkins teaches identifying an image for processing at the local computer and sending the image to a remote server as claimed?

Appellants argue the following:

First, Wilkins does not identify an image for processing at the local computer and send the image to a remote server. In fact, Wilkins teaches the opposite as follows: “However, this invention allows for a more efficient alternative approach that calls for a low resolution-image to be downloaded from the remote computer device (such as the server computer 406) and processed by the local computer device (such as the host computer 402-1 or photo appliance 403-1).” (see Wilkins at paragraph 0113, lines 3-8) (emphasis in original).

(App. Br. 6)².

The Examiner responds that Wilkins’ Figure 3 shows a processed digital image, host computers (402-1, 402-2, 202-n), and server computer (404) each having processed digital images, the digital negative and associated edit list in a bi-direction network (Ans. 11).

Wilkins teaches that with conventional Web editing techniques, the entire image must be downloaded to be processed locally (Finding of Fact 1). Wilkins further recognizes a more efficient approach of downloading a low-resolution image from the remote computing device (Finding of Fact 2). Thus, Wilkins’ improvement over the prior art is downloading a low-

² Referring to Supp. App. Br. filed Sept. 1, 2006.

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resolution image as opposed to the entire original image. Most importantly, in order to be able to download an image or its low-resolution modified version from the Web, the identified image itself must at some point have been necessarily uploaded to the Web. Furthermore, a user must have identified the image of choice in order to subsequently modify it to a low-resolution image.

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 1 because the identified image must have been necessarily uploaded to the Web prior to its modification to a low-resolution image, which at a later time can be downloaded.

b) Did the Examiner err in determining that Wilkins teaches manipulating either locally or remotely parameters associated with the image without modifying the image itself as claimed?

Appellants argue the following:

Wilkins does not manipulate either locally or remotely parameters associated with the image without modifying the image itself. To the opposite, Wilkins teaches saves the resultant image from the changes on a server computer or on a local computer. "For example, referring to FIG. 4, a user working on a local computing device (such as a photo appliance 403-1 without access to local storage) can efficiently save changes to the server computer 404 over the network 406 Alternatively, the user may choose to save the resultant image locally with the edit list" (paragraph 0113, lines 11-21). Further, Wilkins disclosed "At this point all remotely stored versions of the modified photo(s) must be synchronized in order to maintain coherency between the variously distributed photos

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(i.e., they must all reflect the modifications made to the locally stored photo) . . . In other embodiment, the variously distributed photos can be synchronized by transferring the modified photos themselves” (paragraph 0116). Either saved locally or transferred across the network, the images are clearly changed and modified in Wilkins (emphasis in original).

(App. Br. 6).

The Examiner citing paragraph 0116 asserts that Wilkins teaches manipulating parameters associated with the original image in accordance with instructions received from the local processor and storing metadata describing the manipulations without modifying the original image (Ans. 13).

Wilkins teaches:

More specifically, in a distributed system, such as, for example, the Web, CD media, or directly from a digital camera or other imaging appliance device, the invention provides that a user's digital negative can reside anywhere within the distributed system. In addition, the invention provides the additional capability of storing a modified image locally (or remotely) on read-writeable media while maintaining a reference to the original digital negative. In this way, the user is able to not only access the modified image, but can also automatically access the original digital negative. It should be noted and appreciated that the modified image (also known as a resultant proxy image) can take the form of a fully rasterized image or a lower-resolution thumbnail that contains the results of the edits applied to the digital negative.

(Finding of Fact 3).

Wilkins further teaches that the user may choose to save the resultant

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image locally with the edit list with a link to the original digital negative that can be a reference at any node in the network (Finding of Fact 4). Wilkins further teaches that synchronization can be performed by either sending only the update edit list or by sending the resultant image (Finding of Fact 5).

Furthermore, Wilkins teaches that the file that contains the edit list can take several forms including an approach involving the complete encapsulation of not only the resultant image and the edit list, but also a digital negative (i.e., the original digital negative) (Finding of Fact 6).

Thus, it follows that Wilkins teaches manipulating, either locally or remotely, parameters associated with the image (i.e., manipulating parameters of the proxy image and thereby, parameters associated with the original image) without modifying the image itself (i.e., the original digital negative is available at any node of the network and can be a part of the file including the modified proxy image, but the original digital negative image itself is not modified) (Findings of Fact 3-6).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 1 because Wilkins teaches that the original digital negative image is not modified, but, rather, the proxy image that includes parameters associated with the image is modified (Findings of Fact 3-6).

Regarding claim 2

Did the Examiner err in determining that Wilkins teaches the synchronizing step including updating local client software for manipulating the image as claimed?

The Appellants argue that “Wilkins does not disclose synchronizing step [sic] that includes updating local client software for manipulating the image since

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synchronizing an updated edit list for a modified photo simply synchronizes the data, but not the local client software to manipulate the image” (App. Br. 6).

The Examiner’s Final Rejection cites Wilkins’ paragraph 0116 for the teaching that synchronization of an updated edit list occurs (Ans. 4). However, Wilkins is silent as to the limitation of “updating local client software for manipulating the image,” as recited in claim 2.

Thus, Appellants’ argument has persuaded us of error in the Examiner’s rejection of claim 2 because Wilkins is silent as to updating local client software for manipulating the image, and, thus, we reverse the Examiner’s rejection.

Regarding claim 3

Did the Examiner err in determining that Wilkins teaches the manipulating step including manipulating a proxy image associated with the image as claimed?

With respect to claim 3, Appellants argue the following:

Wilkins’ modified proxy image on 030 [sic], line 17 relates to an image or thumbnail of the image that contains the results of the edits applied to the negative. However, Wilkins does not disclose manipulating a proxy image associated with the image and either locally or remotely parameters associated with the image without modifying the image itself.”

(App. Br. 6-7).

As stated *supra*, Wilkins teaches manipulating either locally or remotely parameters associated with the image (i.e., manipulating parameters of the proxy image and, thereby, parameters associated with the original image) without modifying the image itself (i.e., the original digital

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negative is available at any node of the network and can be part of the file including the modified proxy image, but the original digital negative image itself is not modified) (Findings of Fact 3-6).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 3 because Wilkins teaches that the original digital negative image is not modified, but, rather, the proxy image that includes parameters associated with the image is modified.

Regarding claim 15

Did the Examiner err in determining that Wilkins teaches that the image parameters include the state of the user interface as claimed?

Appellants argue that paragraph 0102, lines 1-7 in Wilkins does not disclose the state of the user interface (App. Br. 7). We note that the Examiner's rejection does not refer to paragraph 0102, but rather paragraph 0075, lines 1-6, which addresses operations that are part of the state description (Ans. 6 and Finding of Fact 7).

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 15 because Appellants have not rebutted the Examiner's finding that Wilkins teaches the state of the user interface as claimed (Finding of Fact 7).

Regarding claim 17

Did the Examiner err in determining that Wilkins teaches that the image parameters include annotation information as claimed?

Appellants argue that Wilkins does not teach image parameters including annotation information (App. Br. 7). Appellants further contend that annotation is

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information that appears on an image, and Wilkins' text strings can be a description of the image, and thus is not the same as annotation (Appeal Br. 7).

The term "annotation" is defined, in pertinent part, as "a note added by way of comment or explanation" (Finding of Fact 8). Wilkins teaches text strings that are part of the edit list data associated with the image (Finding of Fact 9). Thus, Wilkins' text strings meet the claim limitation of "annotation information" as claimed in claim 17. Claim 17 does not recite that the annotation information appears on the image, and, as stated *supra*, although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *Van Geuns*, 988 F.2d at 1184.

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 17 because Wilkins teaches the use of text strings as annotation information as claimed (Findings of Fact 8 and 9).

Regarding claim 22

Did the Examiner err in determining that Wilkins teaches a personal template that describes a particular configuration for the parameters for a given image and wherein the image parameters include an identifier pointing to the personal template as claimed?

Appellants argue that "Wilkins does not teach defining a personal template that describes a particular configuration for the parameters for a given image and wherein the image parameters includes an identifier pointing to the personal template" (Appeal Br. 8) (emphasis in original). Appellants further argue that "[t]he 'individual operations' in paragraph 75 of Wilkins are not 'personal template' [sic] related to a user disclosed in the instant application" (App. Br. 8).

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The Examiner's rejection states that Wilkins teaches a list of individual operations that constitute a personal template (Ans. 7).

Wilkins teaches that operations that are part of the state description can be a list of individual operations (Finding of Fact 10). Thus, Wilkins teaches a list of individual operations to be applied to the image, which can be reasonably interpreted as a "personal template." With respect to Appellants' contention that this is not a "personal template" as disclosed in the instant application, as stated *supra*, although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *Van Geuns*, 988 F.2d at 1184. Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 22 because Wilkins teaches the use of a personal template as claimed (Finding of Fact 10).

Regarding claim 26

Did the Examiner err in determining that Wilkins teaches checking for conflicts between the metadata stored at the local client computer and the remote server as claimed?

Appellants argue that "conflicts between metadata" as recited in claim 26, refers to conflicting information in the metadata stored at the local client computer and the remote server and has nothing to do with the network usage and processor time as cited in the Final Rejection (App. Br. 8).

Wilkins teaches that detected changes or modifications (i.e., crop, cut, rotate) produce an updated list which results in synchronization between the local and the remote device either by sending the update list or the resultant image that incorporates all the modifications (Finding of Fact 11). Thus, Wilkins does teach

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detection of conflicts between metadata stored at the local client computer and the remote server.

Thus, Appellants' argument has not persuaded us of error in the Examiner's rejection of claim 26 because Wilkins teaches the detection of conflicts between the metadata as claimed (Finding of Fact 11).

Regarding claim 28

Did the Examiner err in determining that Wilkins teaches storing two different states of the metadata at each of the local client computer and the remote server as claimed?

Appellants assert that Wilkins does not teach storing two different states of the metadata at each of the local client computer and the remote server, one for each of the conflicting parameters, and the Examiner provides no specific discussion regarding this limitation (App. Br. 8).

Appellants' argument has persuaded us of error in the Examiner's rejection of claim 28. As Appellants indicate, the Examiner has simply not addressed this limitation specifically in the rejection, nor do we find any such teaching in Wilkins. Accordingly, we reverse the Examiner's rejection of claim 28.

Regarding claim 29

Did the Examiner err in determining that Wilkins teaches the step of alerting the user including displaying a dialog box to the user from which a selection can be made as claimed?

Appellants assert that Wilkins does not teach displaying a dialog box to the user from which a selection can be made, and the Examiner provides no specific discussion regarding this limitation (App. Br. 8).

Appellants' argument has persuaded us of error in the Examiner's rejection of claim 29. As with claim 28, the Examiner has simply not addressed the recited limitation, nor do we find any such teaching in Wilkins. Accordingly, we reverse the Examiner's rejection of claim 29.

OBVIOUSNESS

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

Discussing the question of obviousness of a patent that claims a combination of known elements, the Court in *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007) explains:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida [v. AG Pro, Inc.]*, 425 U.S. 273 (1976) and *Anderson's-Black Rock[, Inc. v. Pavement Salvage Co.]*, 396 U.S. 57 (1969) are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

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KSR, 127 S. Ct. at 1740. If the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that “there was an apparent reason to combine the known elements in the fashion claimed.” *Id.*, 127 S. Ct., at 1740-41. Such a showing requires “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

If the Examiner’s burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

Regarding the Examiner’s obviousness rejection of claims 24 and 32 (Ans. 10), Appellants merely allege that (1) neither Wilkins nor Tackbary discloses the limitations of independent claim 1; (2) there is no suggestion or motivation for the combination; and (3) there is no reasonable expectation of success (App. Br. 10-

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11).³ Apart from these conclusory assertions, however, Appellants did not explain with particularity how or why the Examiner's rejection was deficient in this regard. Such conclusory assertions fall well short of persuasively rebutting the Examiner's prima facie case of obviousness. *See Oetiker*, 977 F.2d at 1445. For the reasons articulated *supra*, we find no error in the Examiner's findings regarding Wilkins fully meeting the limitations of claim 1. Moreover, Appellants have not shown error in the Examiner's combining Tackbary with Wilkins to arrive at the invention recited in claims 24 and 32. As such, Appellants have not shown that the Examiner erred in rejecting claims 24 and 32 under § 103 based on Wilkins and Tackbary.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 3-23, 25-27, 30, 31, and 33-45 under 35 U.S.C. § 102(e). We also find that the Examiner did not err in rejecting claims 24 and 32 under 35 U.S.C. § 103(a). Appellants, however, have shown that the Examiner erred in rejecting claims 2, 28, and 29 under 35 U.S.C. § 102(e).

ORDER

The decision of the Examiner to reject claims 1-45 is affirmed-in-part.

³ Only arguments made by Appellants have been considered in this decision. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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